Supreme Court, U. S.
FILED
JUL 8 1980
MICHAEL RODAK, JR., CLERK

No. 79-1834

In the Supreme Court of the United States

OCTOBER TERM, 1979

COCA-COLA BOTTLING COMPANY OF MEMPHIS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION NO. 1196

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Board properly found that, in the circumstances of this case, petitioner was not relieved of its obligation to bargain with the employees' bargaining agent because it affiliated with a different international union.

2. Whether the Board properly found that the filing of a decertification petition did not justify petitioner's withdrawal of recognition from the bargaining agent.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statute involved	1
Statement	1
Argument	5
Conclusion	9
Appendix	1a

TABLE OF AUTHORITIES

Cases:

American Bridge Division, U.S. Steel Corp. v. *NLRB*, 457 F.2d 660	6
Amoco Production Co., 239 N.L.R.B. No. 182 (Jan. 3, 1979), remanded on other grounds, *Amoco Production Co.* v. *NLRB*, 613 F.2d 107	6, 7
Hamilton Tool Co., 190 N.L.R.B. 571	7
NLRB v. *Bernard Gloekler North East Co.*, 540 F.2d 197	6
NLRB v. *Commercial Letter, Inc.*, 496 F.2d 35	6
NLRB v. *Pearl Bookbinding Co.*, 517 F.2d 1108	6, 7
NLRB v. *Pittsburgh Steamship Co.*, 340 U.S. 498	6
Retail Store Employees Union, Local 428 v. *NLRB*, 528 F.2d 1225	6
Union Carbide & Carbon Corp. v. *NLRB*, 244 F.2d 672	6

Statute, rule and regulation:	Page
National Labor Relations Act, 29 U.S.C. 151 *et seq.*	1
Section 8(a)(1), 29 U.S.C. 158(a)(1)	3, 5
Section 8(a)(3), 29 U.S.C. 158(a)(3)	3, 5
Section 8(a)(5), 29 U.S.C. 158(a)(5)	3, 5
Sup. Ct. R. 23	5
29 C.F.R. 101.18	4

OPINIONS BELOW

The order of the court of appeals (Pet. App. 4a–6a) is reported at 616 F.2d 949. The Board's original decision and order (Pet. App. 14a–144a) is reported at 232 N.L.R.B. 794. Its supplemental decision and order (Pet. App. 7a–13a) is reported at 239 N.L.R.B. No. 183. The decision of the acting regional director on behalf of the Board amending the union's certification is unreported (App., *infra*, 1a–10a).

JURISDICTION

The judgment of the court of appeals was entered on February 25, 1980 (Pet. App. 4a–6a). A petition for rehearing or rehearing en banc was denied on April 3, 1980 (Pet. App. 3a). The petition for a writ of certiorari was filed on May 19, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, are set forth at pages 3 and 4 of the petition.

STATEMENT

In June 1968, the Board certified the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers (Brewery Workers) as the bargaining representative of petitioner's (the Company) employees (Pet. App. 9a, 28a). In November 1971, the Brewery Workers and its Local Union No. 196 signed a bargaining agreement with the Company effective until November 12, 1974 (Pet. App. 9a, 108a).

In December 1973, the Brewery Workers and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Teamsters) agreed to merge (Pet. App. 9a, 27a–28a). Pursuant to the merger, Local 196 was rechartered as Teamsters Local 1196 (Pet. App. 9a, 28a).

Thereafter, Local 1196 conducted meetings of the union membership in January and early February 1974, to discuss the effects of the merger. On March 3, 1974, a special meeting of the membership was called to vote on affiliation with the Teamsters and a secret ballot election was held (Pet. App. 10a–11a). Affiliation with the Teamsters was approved by a vote of 78 to 3, with one void ballot (Pet. App. 11a).[1]

After the merger and rechartering, Local 1196 continued to operate with essentially the same officers as Local 196 (App., *infra*, 4a). Local 1196 also continued to operate under the same by-laws and constitution as had Brewery Workers Local 196 (A. 75, 75a, 98)[2] and to operate out of the same office, using the same books and records and bank accounts (App., *infra*, 4a–5a). Moreover, Local 1196 continued to abide by and enforce Local 196's bargaining agreements, and all the employers which had recognized Local 196, with the exception of the Company, continued to recognize,

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[1] Unit employees who had signed dues-checkoff or authorization cards for either Local 196 or the Teamsters were eligible to vote. At the time of the election, there were approximately 490 employees, of whom 212 were on the eligibility list (Pet. App. 10a–11a & n.3).

[2] "A." refers to the printed appendix to the briefs in the court of appeals.

forward union dues to, and process grievances with, Local 1196 (App., *infra*, 4a).

Pursuant to a petition filed by Local 1196, the Board amended the certification designating the bargaining agent for the company's employees to reflect the agent's affiliation with the Teamsters (App., *infra*, 10a; Pet. App. 104a-105a). In the subsequent unfair labor practice proceedings, the Board found that the Company violated Section 8(a)(5) and (1) of the Act, 29 U.S.C. 158(a)(5) and (1), by refusing to bargain with Local 1196, and issued a bargaining order (Pet. App. 12a, 124a-125a, 133a).[3]

In concluding that the Company unlawfully refused to bargain with Local 1196, the Board rejected the contention that the affiliation election was improperly limited to union members. The Board explained that "an affiliation vote is basically an internal union matter," and noted that "nonmembers were not foreclosed from an opportunity to become members and to then participate in the election" (Pet. App. 11a).

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[3]The Board further found that the Company violated Section 8(a)(1) of the Act, 29 U.S.C. 158(a)(1), by seeking to undermine Local 1196 by sponsoring the circulation of antiunion petitions, and by inducing and threatening employees to withdraw from the Local. The Board also found that, in furtherance of this antiunion campaign, the Company discharged Magnolia Jackson, the leading supporter of the union, and, when the employees engaged in an unfair labor practice strike protesting the Company's illegal conduct, the Company threatened strikers with discharge, conditioned their reinstatement upon confessions of guilt for striking, and delayed their reinstatement, in violation of Section 8(a)(3) and (1) of the Act, 29 U.S.C. 158(a)(3) and (1) (Pet. App. 126a-127a). The court of appeals upheld these findings except as to the discharge of Jackson (Pet. App. 5a-6a). The Company does not challenge those findings here.

The Board also rejected the Company's contention that it properly relied on an antiunion petition submitted to the Company by employee Randolf Krone on March 4, 1974, and the decertification petition filed with the Board by employee Richard Lee Cox on September 10, 1974, in justifying its withdrawal of recognition from Local 1196 (Pet. App. 105a–106a). The Board held that the Company could not rely on the Krone antiunion petition because the Company unlawfully assisted the Krone effort and encouraged its employees to sign the petition (see note 3, *supra*) (Pet. App. 122a). Regarding the Cox decertification petition, the Board concluded that, since Cox failed to secure support from at least 30% of the employees to decertify Local 1196, the Regional Director properly solicited withdrawal of this petition pursuant to the Board's policy that representation petitions will be processed only if supported by a 30% showing of interest (Pet. App. 123a).[4]

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[4]The Board's Statements of Procedure, Section 101.18, (29 C.F.R.), state in pertinent part:

> The evidence of representation submitted by the petitioning labor organization or by the person seeking decertification is ordinarily checked to determine the number or proportion of employees who have designated the petitioner, it being the Board's administrative experience that in the absence of special factors the conduct of an election serves no purpose under the statute unless the petitioner has been designated by at least 30 percent of the employees.

In its initial decision on the Section 8(a)(5) aspect of this proceeding (Pet. App. 149a–171a), the Board (Member Kennedy dissenting) concluded that the Company violated Section 8(a)(5) of the Act by refusing to bargain with Local 1196 during the pendency of the Brewery Workers contract. However, the

The court of appeals enforced the Board's bargaining order, concluding that substantial evidence supported the Board's findings that "Teamsters Local 1196 was a continuation of Brewery Workers Local 196 and there was no justification for Coca-Cola's withdrawing recognition" (Pet. App. 5a).[5]

ARGUMENT

The Board's policy, approved by the courts, is that the merger of two international unions, which leads to the rechartering of a constituent local, does not raise a question of representation to be resolved through the Board's election procedures so long as the identity of the union which was the bargaining representative remains essentially unchanged and the members of the union have been afforded an opportunity to consider and vote on the proposed change through democratic

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Board further found that a question of representation was properly raised by the decertification petition. It therefore limited the Company's bargaining obligation to November 12, 1974, the expiration date of the Brewery Workers contract (Pet. App. 154a–155a, 106a–108a). Thereafter, the Board vacated its initial decision and consolidated the Section 8(a)(5) complaint with the Section 8(a)(1) and (3) complaint (*supra*, note 3) which had subsequently been filed (Pet. App. 145a–148a). The Board noted that "if [those] allegations are proven, [it] would establish that the [Company] unlawfully solicited employees to decertify, and not to support [Local 1196]" (Pet. App. 146a). The Board also noted that the decertification petition had been withdrawn (*ibid.*).

[5]The Company also seeks review of the order of the court of appeals enforcing an order compelling arbitration of two contract disputes with Local 1196 (Pet. 2, 18 n.2; Pet. App. 172a–173a). The petition does not present any question pertaining to that order, as required by Rule 23 of the Rules of this Court. We therefore do not address it.

processes. *NLRB* v. *Pearl Bookbinding Co.*, 517 F.2d 1108, 1111-1112 (1st Cir. 1975); *NLRB* v. *Commercial Letter, Inc.*, 496 F.2d 35, 39-42 (8th Cir. 1974); *Union Carbide & Carbon Corp.* v. *NLRB*, 244 F.2d 672, 673 (6th Cir. 1957).

The Company's contention (Pet. 10) that the change in international affiliation did change the identity of the bargaining agent merely contests the Board's contrary finding, which was upheld by the court of appeals.[6] That factual issue raises no issue warranting review by this Court. *NLRB* v. *Pittsburgh Steamship Co.*, 340 U.S. 498, 502-503 (1951).[7]

Similarly, the courts have upheld the Board's position that a vote on a change of union affiliation may properly be confined to those members of the bargaining unit who are union members. *NLRB* v. *Commercial Letter, Inc.*, *supra*, 496 F.2d at 40; *NLRB* v.

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[6] As noted above (*supra*, pages 2-3; App., *infra*, 4a-5a), the regional director found that Local 1196 has continued to operate with essentially the same officers, using the same minute books and records, the same office, the same bank accounts, and the same by-laws and constitution, as had Local 196.

[7] The decisions of the Third Circuit in *American Bridge Division, U.S. Steel Corp.* v. *NLRB*, 457 F.2d 660 (1972), and *NLRB* v. *Bernard Gloekler North East Co.*, 540 F.2d 197 (1976), relied upon by the Company (Pet. 13-16), are distinguishable. Those cases involve affiliation of a small independent union with a large international union where, on the facts presented, the court concluded that there was no continuity of representative. Nor is *Amoco Production Co.* v. *NLRB*, 613 F.2d 107 (5th Cir. 1980) (Pet. 11-12), to the contrary. There the Fifth Circuit remanded the case to the Board for a factual determination on whether there was continuity of representation. 613 F.2d at 112. And see *Retail Store Employees Union, Local 428* v. *NLRB*, 528 F.2d 1225, 1227 (9th Cir. 1975).

Pearl Bookbinding Co., supra, 517 F.2d at 1111-1112. As the First Circuit stated in *NLRB* v. *Pearl Bookbinding Co., supra*, 517 F.2d at 1111, nonmembers of the union are not entitled to vote in any affiliation election where there is no evidence "to show that the successor union is substantially different—other than in name and affiliation—from the prior union." For, as the Board held in *Hamilton Tool Co.*, 190 N.L.R.B. 571, 574 (1971), where "the subject voted upon involve[s] an internal union matter relating to the affiliation of the incumbent union rather than to the employee selection of a bargaining representative, the preclusion of nonmembers from voting [does] not affect the regularity of the election."[8]

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[8] As the Board explained in *Amoco Production Co.*, 239 N.L.R.B. No. 182 (Jan. 3, 1979), slip op. 2-3, remanded on other grounds, *Amoco Production Co.* v. *NLRB*, 613 F.2d 107 (5th Cir. 1980):

> An affiliation is the alignment or association of a union with a national or parent organization. An affiliation does not create a new organization, nor does it result in the dissolution of an already existing organization. The organizations participating in the affiliation determine whether any administrative or organizational changes are necessary in the affiliation organization. * * *
>
> * * * [A]ffiliation does not directly involve the employment relation. The status of wages, working conditions, benefits, and grievance procedures is unaffected by the affiliation vote; the collective-bargaining agreement between

The second question presented in the petition (Pet. 3)—whether employees are entitled to an election "when an uncoerced majority * * * have signed a petition repudiating their union"—is not raised on this record. As shown above, (see page 4, *supra*), the Krone petition was found by the Board to have been tainted by Company coercion (Pet. App. 34a–47a), and the Cox petition was withdrawn when it appeared that it did not contain a sufficient showing of interest to hold an election under the Board's rules (Pet. App. 110a; *supra*, note 4).

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the union and the employer remains effective until the stated expiration date.

Having no direct effect on the employment relationship, affiliation vote procedures, including the voting status of nonmembers, are internal union matters. Nonmembers may elect to retain their nonmember, nonvoting, nonparticipatory status, or, if they are sufficiently interested or concerned about an upcoming affiliation vote, they may become members and participate under normal union rules. That the option to participate in an affiliation election is not accorded to nonmembers differs little from their exclusion from other internal matters, including strike votes and contract ratification votes, and the selection of officers, stewards, and negotiators. But we have not found exclusion of nonmembers in those instances unlawful or incapacitating. [Footnotes omitted.]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 1980

APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SIXTH REGION

Case No. 26-AC-24

THE COCA-COLA BOTTLING COMPANY
OF MEMPHIS

EMPLOYER

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION 1196[1]

PETITIONER

DECISION AND AMENDMENT OF CERTIFICATION

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing

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[1] On April 24, 1974, the Regional Director, Region 26, issued an Order reopening hearing for the primary purpose of taking evidence on the issue of labor organization. On April 26, 1974, the hearing was reopened and the Petitioner moved that the Petitioner's name be amended on the Petition to International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 1196. The Employer objected to Petitioner's Motion to amend the petition and moved that on the basis of the Petitioner's Motion the Petition be dismissed. The Hearing officer granted the Petitioner's Motion to amend the Petition and referred the Employer's Motion to dismiss to the Regional Director. Inasmuch as the Employer's contentions in support of its Motion are the same as those advanced in opposition to the amendment of certification, and having found that the amendment is proper, I hereby deny the Employer's motion.

was held before a Hearing Officer of the National Labor Relations Board on March 20, 1974, at Memphis, Tennessee. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its power in connection with this case to the undersigned Regional Director.

Upon the entire record[2] in this case, the Regional Director finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner[3] proposed to amend the certification as follows:

> By changing the certification from International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers to International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 1196.

3. Pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted under the supervision of the Regional Director in Case No. 26-RM-238, and, thereafter, on June 20, 1968, the Acting Regional Director certified International Union of

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[2]The Employer and Petitioner filed briefs which have been duly considered.

[3]I find that the Petitioner exists for the purpose of representing the employees with respect to their wages, hours and working conditions, and that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. *Southeastern Rubber Manufacturing Co.*, 173 NLRB 796.

United Brewery, Flour, Cereal, Soft Drink and Distillery Workers as the exclusive collective bargaining representative of certain employees of the Employer at its Memphis, Tennessee, location.[4] Thereafter, the Employer and International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers and its Local No. 196 entered into a collective bargaining relationship and at the time of hearing there was a 3-year collective bargaining agreement in effect which expires on November 12, 1974.

On or about October 1, 1973, the Executive Board for Local 196 met and appointed W. H. Bailey, business agent and financial secretary of Local 196, as a delegate to go to a convention and vote "yes" on the issue of the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers' affiliation with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. On the following day, on or about October 2, 1973, at a regularly scheduled membership meeting, the minutes from the Executive Board proceeding were read and approved by 53 union members in attendance at said meeting. The Petitioner does not rely on this meeting as an approval through "democratic process" of its membership as to the affiliation issue.

At the October 1973, convention, the International Union of United Brewery, Flour, Cereal, Soft Drink

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[4] All production and maintenance employees at the Coca-Cola Bottling Company of Memphis, Memphis, Tennessee, operation, including driver-salesmen, driver-helpers, helpers, relief drivers, pre-mix, advertising, garage, cooler and fork lift employees, excluding office clerical employees, guards, professional and technical employees, and supervisors as defined in the Act.

and Distillery Workers of America and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, executed a memorandum of understanding wherein it was agreed to merge the two international unions effective December 31, 1973.

On or about November 16, 1973, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America granted Local 196 a charter as Local 1196 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. At the time of granting the new charter, Local 196 had current collective bargaining agreements with eight employers in the Memphis, Tennessee, area. Local 1196 continued to pursue and enforce these collective bargaining agreements and seven employers continued to deduct and forward dues to Local 1196, handle grievances and deal with that Local with the exception of the Employer herein.

Local 1196 continued to operate with essentially the same officers as Local 196. Approximately two months after the granting of the charter, in January of 1974, Bailey and Bill Argol, former president of Local 196, resigned. Bailey's position was filled by Bill Maxwell, the then treasurer and executive board member, and Pinky Burton, the former vice president of Local 196 and then current vice president of Local 1196, assumed Argol's former position as president of Local 1196. (Argol has since been elected president of Local 1196.)

At the same time of merger, Local 1196 assumed custody of and utilized Local 196's minute books, continued to occupy the same office, continued using the

same bank accounts, and continued to administer all of Local 196's contracts. However, the Employer herein refused to recognize Teamsters Local 1196 as the exclusive bargaining representative of its employees contending that Local 196 was still in existence. On February 1, 1974, Local 1196 of the International Teamsters filed a petition for amendment of certification in Case No. 26-AC-23. On February 12, 1974, the Petitioner withdrew this petition after counsel advised of the Board's requirement to insure employees in the unit a democratic opportunity to determine whether they wished to affiliate.

Thereafter, on or about February 19, 1974, the Petitioner posted notices in several locations such as by the time clocks and the bulletin board near the work stations, locations normally utilized for posting of union information at the Employer's plant. The notice was addressed to "All Union Members Employed at Coca-Cola" and stated that a union meeting would be held at 2:00 p.m. on Sunday, March 3, 1974, at Teamsters 984 Union Hall. The purpose of the meeting was reflected in the "agenda" portion of the notice and reads as follows:

> **AFFILIATION VOTE**
>
> The purpose of this meeting is for all union members at Coca-Cola to consider and discuss the question of affiliation of Local Union No. 196 with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and to vote in the secret ballot election on the affiliation.

The Employer removed these notions from the bulletin board, asserting that Local 1196 was not the col-

lective bargaining representative of its employees and, therefore, had no right to post "controversial" literature in its plant. The Petitioner continued to repost notices of the meeting after their removal by the Employer and ultimately handbilled the notices to approximately 150 of the unit employees at the plant.

The voting was held at the time and place scheduled. Lynn Agee, Petitioner's counsel, was introduced to the membership by Maxwell. Agee announced the purpose of the meeting as for the union membership to decide by secret ballot whether Local 196 should affiliate with the International Brotherhood of Teamsters and opened a discussion period on the pros and cons of affiliation with the membership. One member wanted to know what the Teamsters was going to do for the employees. Agee referred the question to Dave Hodgins, a representative of the Southern Conference of the Teamsters, who answered the question with the remark, "What are you people going to do for the Teamsters." After the discussion period, the eligible voters formed a single file line in front of two checkers, who checked off the name of the individual members from a list they had before them. The eligibility list was comprised of approximately 122 employees who were on Local 196's dues checkoff with the Employer and 100 employees who had signed Teamsters dues checkoff authorization cards which had been transmitted to the Company.[5] After the individual

[5] Of the 100 Teamsters dues checkoff authorization cards there were a maximum of 8 to 10 duplicate cards of employees who were also on dues checkoff under the old Local 196 union dues checkoff cards. Thus, there were approximately 212 employees on the eligibility list.

voter was checked off the list, he received a ballot from Agee. Upon receipt of the ballot the voter entered one of two unmarked, curtained and private booths. Only one person at a time was allowed in the booth. After the voter marked the ballot, the voter deposited the ballot in one of two secured ballot boxes. The ballots stated:

BALLOT OF AFFILIATION

To Affiliate with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Yes ☐	No ☐

At the conclusion of the balloting, the ballot box was secured and initialed and taken to a table. Union members were selected for the tabulation of ballots. The results of the election were 78 votes for affiliation, 3 against and 1 void ballot.[6]

The only unit employees denied the right to vote were several Coca-Cola employees who presented themselves at the polls and were denied the right to vote when their names did not appear on the eligibility list.

After the Coca-Cola election, a similar election was conducted among Petitioner's members employed by

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[6]The only marking on the void ballot was the signature of the voter and no mark was in either the "yes" or "no" block provided on the ballot.

the other seven employers under contract. The results of this election was 119 votes cast for affiliation and 1 against.

The Employer opposes the amendment to certification on the basis that the election procedures utilized by the Petitioner failed to give unit employees an "opportunity to consider" and vote on the question of affiliation. In support thereof, the Employer contends that Hodgins' "speech" was strongly in favor of affiliation with the Teamsters and that nothing was presented to rebut same which precluded the voters the opportunity to consider the pros and cons of the affiliation vote. The evidence adduced at the hearing does not support Respondent's contention. The Employer presented no witness in regard to the remarks that Hodgins allegedly made at the March 3, 1974, meeting. As noted above, the only remark attributed to Hodgins was his response to a question from a union employee.

The Employer further contends that prior to the March 3, 1974, meeting Randy Krone, a shop steward for Local No. 196, had requested information from Maxwell concerning the meeting and was advised by Maxwell that there was not going to be a vote on affiliation but merely an attempt to sign up new members for the Teamsters. Maxwell testified to a similar conversation; however, according to Maxwell, this conversation occurred a full three weeks prior to the March 3 meeting and before a regularly scheduled union meeting at which attempts were, in fact, made to sign up Teamsters. Krone admitted that he had observed the notices posted at the plant announcing the

March 3 meeting and the purpose thereof. I, therefore, find that Maxwell did not mislead Krone as to the purpose of the March 3, 1974, meeting. I further find that Agee's introduction at the March 3, 1974, meeting, advising the employees that the purpose of such meeting was to discuss and then vote by secret ballot on the issue of whether Local 196 should affiliate with the International Brotherhood of Teamsters, to be a sufficient and adequate opportunity to consider the pros and cons of the affiliation vote.

The Employer contends that, for an amendment to certification to be proper, not only the union employees involved must be allowed to vote, but also that the unit employees who are not union members must be allowed to vote. The Employer points to the fact that only 78 votes were cast for affiliation while the unit is composed of approximately 400 employees. The Employer further asserts that there were only 100 Teamsters authorization cards and that 25 of these cards were obvious forgeries. However, the voting eligibility list was comprised of "union members" which included 122 employees on Local 196's union dues checkoff and the approximately 100 card signers on the Teamsters' authorization cards for a total of approximately 212 eligible voters. [See footnote 5 herein.] The fact that nonmembers of Petitioner were ineligible to vote does not invalidate the election. All members, and nonmembers who chose to become members, were given the opportunity to vote if they so desired. See *North Electric Company*, 165 NLRB 942. Nor am I persuaded that the number of votes actually cast denies the election validity. It is well established that where adequate opportunity to vote is provided to all

those employees eligible to vote, the decision of the majority actually voting is binding upon all in the conduct of democratic elections. See *United States Gypsum Company*, 164 NLRB 931; *The East Ohio Gas Company*, 140 NLRB 1269.[7]

4. Accordingly, the certification of representative issued on June 20, 1968, in Case No. 26-RM-238, shall be, and it hereby is, amended as follows:

> By substituting the name International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 1196.

as the certified Union.[8]

Dated at Memphis, Tennessee, this 7th day of May 1974.

/s/ JOHN F. HARRINGTON
JOHN F. HARRINGTON, ACTING DIRECTOR
Twenty-sixth Region
National Labor Relations Board
746 Clifford Davis Federal Building
167 North Main Street
Memphis, Tennessee 38103

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[7]The alleged 25 forged Teamsters cards were not received into evidence and there is no evidence that any of the alleged 25 forged card signers attempted and did in fact vote in the election. However, even if the 25 forged card signers had voted in the election and had voted against affiliation, there would still have been an overwhelming majority vote in favor of affiliation. Cf. *Hamilton Tool & Die Co.*, 190 NLRB 571 at page 574.

[8]This is not to be construed as a recertification. Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this decision may be filed with the Board in Washington, D.C. This request must be received by the Board in Washington by May 20, 1974.

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